

Item LEG05-02 Response Form

Title: Establish Consistent Times for Service of Papers Before a Hearing in Elder and Dependent Adult Abuse Cases and for Firearms Relinquishment in Civil Harassment and Workplace Violence Cases (amend Welf. & Inst. Code, § 15657.03 and Code Civ. Proc., § 527.9)

- ☐ Agree with proposed changes
- ☐ Agree with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2005

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action..*

Invitation to Comment (LEG05-02)

Title	Legislative Proposal: Establish Consistent Times for Service of Papers Before a Hearing in Elder and Dependent Adult Abuse Cases and for Firearms Relinquishment in Civil Harassment and Workplace Violence Cases (amend Welf. & Inst. Code, § 15657.03 and Code Civ. Proc., § 527.9)
Summary	<p>This is a proposal for the Judicial Council to sponsor legislation to:</p> <ol style="list-style-type: none">1. Amend Welfare and Institutions Code section 15657.03(g) to provide the same time for service of papers before the hearing in elder and dependent adult abuse prevention cases as provided under Code of Civil Procedure sections 527.6(g) and 527.8(h) for service of papers in civil harassment and workplace violence prevention cases; and2. Amend Code of Civil Procedure section 527.9 to provide the same time for relinquishment of firearms after service of orders in civil harassment, workplace violence, and elder and dependent adult abuse cases as provided under Family Code section 6389(c) after service of orders in domestic violence cases.
Source	Civil and Small Claims Advisory Committee Hon. Elihu M. Berle, Chair
Staff	<p>Patrick O'Donnell, Committee Counsel, 415-865-7665 patrick.o'donnell@jud.ca.gov</p> <p>Daniel Pone, Senior Attorney, Office of Governmental Affairs, 916-323-3121, daniel.pone@jud.ca.gov</p>
Discussion	<p><i>Time for Service of Papers in Elder and Dependent Adult Abuse Cases</i> The time for service of papers where a party is requesting a protective order in civil harassment and workplace violence cases is five days before the hearing. (See Code Civ. Proc., §§ 527.6(g) and 527.8(h).) However, the time for service of papers requesting a protective order in elder abuse and dependent adult abuse cases is two days before the hearing. (Welf. & Inst. Code, § 15657.03(g).)</p> <p>The five-day period is more commonly used and appears more appropriate. The five-day period would provide more time for the respondent to prepare and file papers and for the courts to review the papers. Hence, the proposed legislation would amend section 15657.03(g) to provide for service five days before the hearing in elder abuse and dependent adult abuse cases. If a party in such cases needs</p>

more time to complete service, the statute already provides that the party may request an order shortening time for service to the respondent.

Time for Firearms Relinquishment After Service of Orders

Because of a recent amendment in the Family Code, in domestic violence prevention cases the time for relinquishment of firearms is within 24 hours of being served with the protective order. (See Senate Bill 1391 (Romero); Family Code, § 6389(c).) However, in civil harassment, workplace violence, and elder and dependent adult abuse cases, the time for relinquishment of firearms was not changed by this legislation.

Thus, in those cases, the person subject to a protective order, if present at the hearing, must relinquish firearms within 24 hours of the order; but if not present at the hearing, the person must relinquish the firearms within 48 hours after being served with the order. (See Code Civ. Proc., § 527.9(b).) Thus, there is an inconsistency between the different firearms relinquishment statutes.

Rationale for Proposals

These two legislative proposals would provide for more consistent procedures for similar kinds of proceedings.

First, the amendment of the Welfare and Institutions Code section 15657.03(g) to provide time for service of papers in elder and dependent adult abuse proceedings of five days before the hearing would make this time for service the same as for civil harassment and workplace violence prevention cases.

Second, the amendment of Code of Civil Procedure section 527.9(b) to require a person subject to a protective order to relinquish firearms within 24 hours after service of the order in civil harassment, workplace violence, and elder and dependent adult abuse cases would make this requirement the same as for domestic violence cases.

Because of similarity of the types of cases, the procedures, and the issues involved, it appears that uniform procedures and requirements would be desirable in all the types of cases described above.

The text of the proposed amendments is attached.

Attachments

Legislative Proposal

Welfare and Institutions Code section 15657.03 would be amended to read:

1 **Section 15657.03.** (a) An elder and dependent adult who has suffered abuse as
2 defined in Section 15610.07 may seek protective orders as provided in this section.

3
4 (b) For the purposes of this section, “protective order” means an order that includes
5 any of the following restraining orders, whether issued ex parte, after notice and
6 hearing, or in a judgment:

7 (1) An order enjoining a party from abusing, intimidating, molesting, attacking,
8 striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning,
9 including, but not limited to, annoying telephone calls as described in Section 653m
10 of the Penal Code, destroying personal property, contacting, either directly or
11 indirectly, by mail or otherwise, or coming within a specified distance of, or
12 disturbing the peace of the petitioner.

13 (2) An order excluding a party from the petitioner’s residence or dwelling, except
14 that this order shall not be issued if legal or equitable title to, or lease of, the residence
15 or dwelling is in the sole name of the party to be excluded or is in the name of the
16 party to be excluded and any other party besides the petitioner.

17 (3) An order enjoining a party from specified behavior that the court determines is
18 necessary to effectuate orders described in paragraph (1) or (2).

19
20 (c) An order may be issued under this section, with or without notice, to restrain any
21 person for the purpose of preventing a recurrence of abuse, if an affidavit shows, to
22 the satisfaction of the court, reasonable proof of a past act or acts of abuse of the
23 petitioning elder and dependent adult.

24
25 (d) (1) Upon filing a petition for protective orders under this section, the petitioner
26 may obtain a temporary restraining order in accordance with Section 527 of the Code
27 of Civil Procedure, except to the extent this section provides a rule that is
28 inconsistent. The temporary restraining order may include any of the protective
29 orders described in subdivision (b). However, the court may issue an ex parte order
30 excluding a party from the petitioner’s residence or dwelling only on a showing of all
31 of the following:

32 (A) Facts sufficient for the court to ascertain that the party who will stay in the
33 dwelling has a right under color of law to possession of the premises.

34 (B) That the party to be excluded has assaulted or threatens to assault the petitioner.

35 (C) That physical or emotional harm would otherwise result to the petitioner.

36 (2) If a temporary restraining order is granted without notice, the matter shall be
37 made returnable on an order requiring cause to be shown why a permanent order
38 should not be granted, on the earliest day that the business of the court will permit,
39 but not later than 20 days or, if good cause appears to the court, 25 days from the date

1 the temporary restraining order is granted, unless the order is otherwise modified or
2 terminated by the court.

3
4 (e) The court may issue, upon notice and a hearing, any of the orders set forth in
5 subdivision (b). The court may issue, after notice and hearing, an order excluding a
6 person from a residence or dwelling if the court finds that physical or emotional harm
7 would otherwise result to the other party.

8
9 (f) In the discretion of the court, an order issued after notice and a hearing under this
10 section may have a duration of not more than three years, subject to termination or
11 modification by further order of the court either on written stipulation filed with the
12 court or on the motion of a party. These orders may be renewed upon the request of a
13 party, either for three years or permanently, without a showing of any further abuse
14 since the issuance of the original order, subject to termination or modification by
15 further order of the court either on written stipulation filed with the court or on the
16 motion of a party. The failure to state the expiration date on the face of the form
17 creates an order with a duration of three years from the date of issuance.

18
19 (g) Upon the filing of a petition for protective orders under this section, the
20 respondent shall be personally served with a copy of the petition, notice of the hearing
21 or order to show cause, temporary restraining order, if any, and any affidavits in
22 support of the petition. Service shall be made at least ~~two~~ five days before the
23 hearing. The court may, on motion of the petitioner or on its own motion, shorten the
24 time for service on the respondent.

25
26 (h) The court may, upon the filing of an affidavit by the applicant that the
27 respondent could not be served within the time required by statute, reissue an order
28 previously issued and dissolved by the court for failure to serve the respondent. The
29 reissued order shall be made returnable on the earliest day that the business of the
30 court will permit, but not later than 20 days or, if good cause appears to the court, 25
31 days from the date of reissuance. The reissued order shall state on its face the date of
32 expiration of the order.

33
34 (i) (1) If the person named in a temporary restraining order is personally served with
35 the order and notice of hearing with respect to a restraining order or protective order
36 based thereon, but the person does not appear at the hearing, either personally or by
37 counsel, and the terms and conditions of the restraining order or protective order are
38 identical to the temporary restraining order, except for the duration of the order, then
39 the restraining order or protective order may be served on the person by first-class
40 mail sent to that person at the most current address for the person available to the
41 court.

1 (2) The judicial form for orders issued pursuant to this subdivision shall contain a
2 statement in substantially the following form:

3 “NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS
4 FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT
5 AT THE HEARING WHERE THE ORDER WAS ISSUED. IF YOU HAVE BEEN
6 PERSONALLY SERVED WITH A TEMPORARY RESTRAINING ORDER OR
7 EMERGENCY PROTECTIVE ORDER AND NOTICE OF HEARING, BUT YOU
8 DO NOT APPEAR AT THE HEARING EITHER IN PERSON OR BY COUNSEL,
9 AND A RESTRAINING ORDER OR PROTECTIVE ORDER IS ISSUED AT THE
10 HEARING THAT DOES NOT DIFFER FROM THE PRIOR TEMPORARY
11 RESTRAINING ORDER OR EMERGENCY PROTECTIVE ORDER, A COPY OF
12 THE ORDER WILL BE SERVED UPON YOU BY MAIL AT THE FOLLOWING
13 ADDRESS _____. IF THAT ADDRESS IS NOT CORRECT OR YOU WISH TO
14 VERIFY THAT THE TEMPORARY OR EMERGENCY ORDER WAS MADE
15 PERMANENT WITHOUT SUBSTANTIVE CHANGE, CALL THE CLERK OF
16 THE COURT AT _____.”
17

18 (j) (1) The court shall order the petitioner or the attorney for the petitioner to deliver,
19 or the clerk of the court to mail, a copy of an order issued under this section, or a
20 reissuance, extension, modification, or termination of the order, and any subsequent
21 proof of service, by the close of the business day on which the order, reissuance,
22 extension, modification, or termination was made, to each local law enforcement
23 agency designated by the petitioner or the attorney for the petitioner having
24 jurisdiction over the residence of the petitioner, and to any additional law enforcement
25 agencies within the court’s discretion as are requested by the petitioner. Each
26 appropriate law enforcement agency shall make available information as to the
27 existence and current status of these orders to law enforcement officers responding to
28 the scene of reported abuse.
29

30 (2) An order issued under this section shall, on request of the petitioner, be served on
31 the respondent, whether or not the respondent has been taken into custody, by any law
32 enforcement officer who is present at the scene of reported abuse involving the parties
33 to the proceeding. The petitioner shall provide the officer with an endorsed copy of
34 the order and a proof of service, which the officer shall complete and send to the
35 issuing court.
36

37 (3) Upon receiving information at the scene of an incident of abuse that a protective
38 order has been issued under this section, or that a person who has been taken into
39 custody is the respondent to that order, if the protected person cannot produce a
40 certified copy of the order, a law enforcement officer shall immediately attempt to
41 verify the existence of the order.
42

1 (4) If the law enforcement officer determines that a protective order has been issued,
2 but not served, the officer shall immediately notify the respondent of the terms of the
3 order and shall at that time also enforce the order. Verbal notice of the terms of the
4 order shall constitute service of the order and is sufficient notice for the purposes of
5 this section and for the purposes of Section 273.6 of the Penal Code.
6

7 (k) Nothing in this section shall preclude either party from representation by private
8 counsel or from appearing on the party's own behalf.
9

10 (l) There is no filing fee for a petition, response, or paper seeking the reissuance,
11 modification, or enforcement of a protective order filed in a proceeding brought
12 pursuant to this section.
13

14 (m) (1) Fees otherwise payable by a petitioner to a law enforcement agency for
15 serving an order issued under this section may be waived in any case in which the
16 petitioner has requested a fee waiver on the initiating petition and has filed a
17 declaration that demonstrates, to the satisfaction of the court, the financial need of the
18 petitioner for the fee waiver. The declaration required by this subdivision shall be on
19 one of the following forms:

20 (A) The form formulated and adopted by the Judicial Council for litigants
21 proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code,
22 but the petitioner is not subject to any other requirements of litigants proceeding in
23 forma pauperis.

24 (B) Any other form that the Judicial Council may adopt for this
25 purpose pursuant to subdivision (r).

26 (2) In conjunction with a hearing pursuant to this section, the court may make an
27 order for the waiver of fees otherwise payable by the petitioner to a law enforcement
28 agency for serving an order issued under this section.
29

30 (n) The prevailing party in any action brought under this section may be awarded
31 court costs and attorney's fees, if any.
32

33 (o) (1) An order issued pursuant to this section shall prohibit the person subject to it
34 from owning, possessing, purchasing, receiving, or attempting to purchase or receive,
35 a firearm.

36 (2) Paragraph (1) shall not apply to a case consisting solely of financial abuse
37 unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

38 (3) The court shall order a person subject to a protective order issued under this
39 section to relinquish any firearms he or she owns or possesses pursuant to Section
40 527.9 of the Code of Civil Procedure.

1 (4) Every person who owns, possesses, purchases, or receives, or attempts to
2 purchase or receive a firearm while the protective order is in effect is punishable
3 pursuant to subdivision (g) of Section 12021 of the Penal Code.
4

5 (p) Any willful disobedience of any temporary restraining order or restraining order
6 after hearing granted under this section is punishable pursuant to Section 273.6 of the
7 Penal Code.
8

9 (q) This section does not apply to any action or proceeding covered by Title 1.6C
10 (commencing with Section 1788) of the Civil Code, by Chapter 3 (commencing with
11 Section 525) of the Code of Civil Procedure, or by Division 10 (commencing with
12 Section 6200) of the Family Code. Nothing in this section shall preclude a
13 petitioner's right to use other existing civil remedies.
14

15 (r) The Judicial Council shall promulgate forms and instructions therefor, rules for
16 service of process, scheduling of hearings, and any other matters required by this
17 section. The petition and response forms shall be simple and concise.

Legislative Proposal

Code of Civil Procedure section 527.9 would be amended to read:

1 **Section 527.9.** (a) A person subject to a temporary restraining order or injunction issued
2 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a
3 restraining order issued pursuant to Section 136.2 of the Penal Code, or Section 15657.03
4 of the Welfare and Institutions Code, shall relinquish the firearm pursuant to this section.

5
6 (b) ~~If the person subject to the order or injunction is present in court at a duly noticed~~
7 ~~hearing. Upon issuance of a protective order under subdivision (a),~~ the court shall order
8 the person to relinquish any firearm in that person's immediate possession or control, or
9 subject to that person's immediate possession or control, within 24 hours of being served
10 with the order, by either by surrendering the firearm to the control of local law
11 enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in
12 Section 12071 of the Penal Code. ~~If the respondent is not present at the hearing, the~~
13 ~~respondent shall relinquish the firearm within 48 hours after being served with the order.~~
14 A person ordered to relinquish any firearm pursuant to this subdivision shall file with the
15 court a receipt showing the firearm was surrendered to the local law enforcement agency
16 or sold to a licensed gun dealer within 72 hours after receiving the order. In the event
17 that it is necessary to continue the date of any hearing due to a request for a
18 relinquishment order pursuant to this section, the court shall ensure that all applicable
19 protective orders described in Section 6218 of the Family Code remain in effect or
20 bifurcate the issues and grant the permanent restraining order pending the date of the
21 hearing.

22
23 (c) A local law enforcement agency may charge the person subject to the order or
24 injunction a fee for the storage of any firearm relinquished pursuant to this section. The
25 fee shall not exceed the actual cost incurred by the local law enforcement agency for the
26 storage of the firearm. For purposes of this subdivision, "actual cost" means expenses
27 directly related to taking possession of a firearm, storing the firearm, and surrendering
28 possession of the firearm to a licensed dealer as defined in Section 12071 of the Penal
29 Code or to the person relinquishing the firearm.

30
31 (d) The restraining order requiring a person to relinquish a firearm pursuant to
32 subdivision (b) shall state on its face that the respondent is prohibited from owning,
33 possessing, purchasing, or receiving a firearm while the protective order is in effect and
34 that the firearm shall be relinquished to the local law enforcement agency for that
35 jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be
36 filed with the court within a specified period of receipt of the order. The order shall also
37 state on its face the expiration date for relinquishment. Nothing in this section shall limit

1 a respondent's right under existing law to petition the court at a later date for modification
2 of the order.

3
4 (e) The restraining order requiring a person to relinquish a firearm pursuant to
5 subdivision (b) shall prohibit the person from possessing or controlling any firearm for
6 the duration of the order. At the expiration of the order, the local law enforcement agency
7 shall return possession of any surrendered firearm to the respondent, within five days
8 after the expiration of the relinquishment order, unless the local law enforcement agency
9 determines that (1) the firearm has been stolen, (2) the respondent is prohibited from
10 possessing a firearm because the respondent is in any prohibited class for the possession
11 of firearms, as defined in Sections 12021 and 12021.1 of the Penal Code and Sections
12 8100 and 8103 of the Welfare and Institutions Code, or (3) another successive restraining
13 order is used against the respondent under this section. If the local law enforcement
14 agency determines that the respondent is the legal owner of any firearm deposited with
15 the local law enforcement agency and is prohibited from possessing any firearm, the
16 respondent shall be entitled to sell or transfer the firearm to a licensed dealer as defined in
17 Section 12071 of the Penal Code. If the firearm has been stolen, the firearm shall be
18 restored to the lawful owner upon his or her identification of the firearm and proof of
19 ownership.

20
21 (f) The court may, as part of the relinquishment order, grant an exemption from the
22 relinquishment requirements of this section for a particular firearm if the respondent can
23 show that a particular firearm is necessary as a condition of continued employment and
24 that the current employer is unable to reassign the respondent to another position where a
25 firearm is unnecessary. If an exemption is granted pursuant to this subdivision, the order
26 shall provide that the firearm shall be in the physical possession of the respondent only
27 during scheduled work hours and during travel to and from his or her place of
28 employment. In any case involving a peace officer who as a condition of employment
29 and whose personal safety depends on the ability to carry a firearm, a court may allow the
30 peace officer to continue to carry a firearm, either on duty or off duty, if the court finds
31 by a preponderance of the evidence that the officer does not pose a threat of harm. Prior
32 to making this finding, the court shall require a mandatory psychological evaluation of
33 the peace officer and may require the peace officer to enter into counseling or other
34 remedial treatment program to deal with any propensity for domestic
35 violence.

36
37 (g) During the period of the relinquishment order, a respondent is entitled to make one
38 sale of all firearms that are in the possession of a local law enforcement agency pursuant
39 to this section. A licensed gun dealer, who presents a local law enforcement agency with
40 a bill of sale indicating that all firearms owned by the respondent that are in the
41 possession of the local law enforcement agency have been sold by the respondent to the
42 licensed gun dealer, shall be given possession of those firearms, at the location where a

- 1 respondent's firearms are stored, within five days of presenting the local law enforcement
- 2 agency with a bill of sale.